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IN THE

# Supreme Court of the United States

OCTOBER TERM, A.D. 1961

## No. 873

**PETER S. SARELAS,**

*Petitioner,*

*vs.*

**PHILLIP S. MAKIN, alias Phillip S. Marinacos; and BASIL CHRISTOFORACOS, alias Hristos Cokinis; and JOHN C. GEKAS,**

*Respondents.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI IN BEHALF OF RESPONDENT, JOHN C. GEKAS.

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*vs.*

**PHILLIP S. MAKIN, alias Phillip S. Marinacos; and BASIL CHRISTOFORACOS, alias Hristos Cokinis; and JOHN C. GEKAS,**

*Respondents.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI IN BEHALF OF RESPONDENT, JOHN C. GEKAS.

The respondent, John C. Gekas, respectfully states that the petitioner is not entitled to have his petition allowed and is not entitled to the writ of certiorari prayed for by him.

### ORDERS AND OPINIONS.

The order of the Trial Court dismissing petitioner's complaint on the court's motion (pages 60-61 of the Abstract).

Order of the Supreme Court of Illinois transferring the cause to the Appellate Court of Illinois, First District. (Abst. 67; contents of the order are not given).

Opinion of the Appellate Court of Illinois, First District (Petitioner's Brief Pages 45-50, filed with the Clerk of the Supreme Court of Illinois).

The judgment of the Appellate Court of Illinois, First District, is not given in the petition. It is quoted as Exhibit A to this brief (Page 1a).

Order of the Supreme Court of Illinois (Appendix C of Petitioner's Brief) dismissing petitioner's appeal.

## JURISDICTION.

The petitioner gives no ground that could constitute a basis for this Honorable Court to take jurisdiction of the case.

1. There is no constitutional question involved where the validity of a statute is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or otherwise.

2. The petitioner did not properly and timely raise any Federal question in the trial court, the trial court did not consider any such question, and its order is devoid of any reference to any Federal or constitutional question upon which the petitioner's claims can be based.

3. The petitioner by the first appeal to the Supreme Court of Illinois, where for the first time he raised a Federal and constitutional question and where the Supreme Court of Illinois transferred the cause to the Appellate Court of Illinois, First District, thus refusing to take jurisdiction of the appeal waived all errors, and the petitioner is conclusively bound by the court's ruling that there is no constitutional question in the case.

4. The record shows that there was no constitutional or Federal question presented to the trial court, that if was not preserved or considered by the Appellate Court, and that the opinion and the judgment of the Appellate Court do not mention any of such questions.

5. There being no constitutional or Federal question in the case, the petitioner was bound by the requirements of Appellate procedure of the State of Illinois to petition

for leave to appeal to the Supreme Court of Illinois instead of which he filed a direct appeal to the Supreme Court of Illinois. The Supreme Court of Illinois entered an order, without opinion, sustaining the motion of the respondents to dismiss petitioner's appeal, which petitioner now asks this Honorable Court to review.

## QUESTIONS PRESENTED.

A. Shall a petition for a writ of certiorari be granted where a petitioner does not properly and timely raise any constitutional or Federal question at the trial court and where the petitioner fails to follow the necessary procedure to present and preserve a Federal or constitutional question for the reviewing courts to consider?

B. Is this a frivolous appeal carried on for the purposes of harassment and delay?

C. Should a petition for a writ of certiorari be denied when it is shown that it asks that the writ should be directed to the Supreme Court of Illinois (which denied to take jurisdiction of the case and which did not render an opinion) and when it should have been directed to the Appellate Court of Illinois, First District, which rendered an opinion and judgment, and when its records should have been certified and brought before this Honorable Court rather than the records of the Supreme Court of Illinois?

## STATEMENT OF THE CASE.

This is a suit for damages arising out of an alleged defamation alleged to have been committed during the course of the lawsuit between Christoforacos, one of the respondents, and the petitioner. Christoforacos had filed a suit against the petitioner for malicious prosecution. The petitioner filed a counterclaim, making Makin, Christomoracos' lawyer, in the said suit, a defendant, and Gekas as their conspirator to defame him. During the course of the suit the petitioner propounded written interrogatories to Christoforacos about a letter which he had written to the petitioner (Abst. 16). The written and verified answers to the said interrogatories (Abst. 42-50) is the basis of this suit, which was filed while the first above mentioned suit was pending.

During the said prior suit the petitioner asked leave to file a supplementary complaint basing his claim of defamation on the above mentioned answers. His oral motion was denied and he was given leave to withdraw it (Abst. 50). Then petitioner filed a motion to strike the said answers and hold Christoforacos in contempt of court, claiming that the answers were defamatory, irrelevant, impertinent and immaterial (Abst. 50). The court denied that motion. Later the respondents made separate motions in each case for a judgment on the pleading, or to strike the counterclaim of the petitioner, and dismiss his suit now before this Honorable Court, or for summary judgment. The court tried those motions together, even though one was filed in the Circuit Court and the other in the Superior Court of Cook County, under the system whereby the trial calendars of both courts were consolidated.

The trial court, on its own motion, dismissed both cases.

Neither of the parties appealed from the order of dismissal of the first case.

The petitioner appealed the instant case directly to the Supreme Court of Illinois, claiming that it must take jurisdiction of the case because his constitutional rights were violated. In this appeal we had difficulty with him. Though the cases were tried together, he induced the Clerk of the Superior Court not to include the record of the first case in the preparation of the record for appeal (Abst. 64). Upon petition, the Honorable Supreme Court of Illinois allowed the record of the first suit to be made a part of the record on appeal of the instant suit, and the respondents filed an additional abstract of that record. Both sides filed briefs and the Honorable Supreme Court of Illinois transferred the case to the Appellate Court of Illinois, First District, because it was improperly brought to the Supreme Court. The record was transferred by the Supreme Court of Illinois to the Appellate Court, together with the abstracts, several motions, orders and briefs of both parties. The Honorable Appellate Court of Illinois rendered its opinion (Petitioner's Brief Pages 45-50) and a judgment (Respondent's Brief Page 3a).

After the judgment of the Appellate Court, the petitioner filed a petition for rehearing, or for certificate of importance. Both were denied. Then he filed his appeal to the Supreme Court of Illinois. In this appeal he filed new abstracts and new briefs, now certified and filed with the clerk of this Honorable Court, but he completely failed to abstract the record of the first suit. The Honorable Supreme Court of Illinois, on motion of the respondents, entered the order complained of (Appendix C of petitioner's brief).

The petitioner filed petitions for a rehearing and to stay the mandate. Both were refused.

In his present petition the petitioner states "constitutional questions were raised and drawn in petitioner's pleading in the State Trial Court" (Abst. 27). That is not correct. In paragraph 13 of his complaint (Abst. 8) he only states: "his right of being guaranteed by the laws of the State of Illinois were continuously and constantly attacked, undermined, and endangered by the above described diabolical, malignant and wrongful acts." In paragraph 4 (Abst. 51) and paragraph 5 (Abst. 53) he states, that each of the motions of the respondents "is made in bad faith and interposed for purposes of obstructing the due administration of justice."

No Federal question was ever raised by him in the trial court, and no other claim or violation of any Federal law or constitution, and no question was raised about the validity of any statute. For the first time in his appeal he raises these questions in his brief, and in that he is very unclear as to when, where and how such violations were committed.

In his statement in his brief before the Supreme Court of Illinois of the theory of his case he claims that the Appellate Court's affirmance of the order of the Trial Court violates his "right to due process of law and the equal protection of the laws which are guaranteed by Section 1 of the 14th Amendment to the Federal Constitution and Section 2 of Article 2 of the Illinois Constitution." He says: "This Honorable Court (Supreme Court of Illinois) has jurisdiction of the appeal because the Appellate Court's Judgment and its Decision deprive the plaintiff of the basic constitutional guarantees to Due Process of Law, Equal Protection of the Laws, the right to Jury Trial and to a Remedy for all injuries and wrongs to his person and repu-

tation which is guaranteed by Section 19, Article II, of the Constitution of Illinois.' "

• • • • •

"The Appellate Court's consideration of documents dehors the complete authenticated Record on Appeal, from other courts and other cases, never consolidated, violates plaintiff's constitutional guarantees to Due Process and Equal Protection of the Laws."

The rest of his grounds, upon which he claims the Supreme Court of Illinois has jurisdiction of his case, (Petitioner's Brief, Pages 6, 7) refer to the Constitution and laws of the State of Illinois. Nowhere it is shown in what manner or fact, or how the Appellate Court opinion deprived him of his constitutional rights to due process of law and equal protection of the laws guaranteed to him by the Federal laws and Constitution.

The Appellate Court affirmed the order or judgment of the Trial Court on grounds exclusively involving state law and law of pleading (Respondent's Brief Page 3a). For the first time in his brief in the Supreme Court of Illinois he raises the construction of Section 48 of the Civil Practice Act (110, Sec. 48) as its being contrary to the Constitution of the State of Illinois and for the first time in his brief before the Supreme Court of Illinois (page 7) he says that the affirmance of the order of the Trial Court under Sec. 48(1)(i) contravenes the provisions of Sec. 43(4) of the same Civil Practice Act, but does not state how or in what manner, and he does not state any violation of the Federal laws by that order or judgment, except, he says, such dismissal "violates plaintiff's constitutional guarantees to due process and equal protection of the laws", but does not refer to the Federal laws.

## ARGUMENT.

We respectfully assert that the petitioner does not present with accuracy, brevity and clearness what is essential to a ready and adequate understanding of the case. He confuses the facts in both cases and intermingles his argument about them. He argues his points on the law as if the law of the State of Illinois is the same as the Federal law and that this Honorable Court has power and authority to correct decisions of the Supreme Court of Illinois on matters pertaining exclusively to State law.

The petition is devoid of merit, and frivolous.

In the first place, he does not and he did not raise any constitutional question in the trial court. He did not attack the validity of any statutes. He did not specifically point out or single out any particular statute that was contrary to the provisions of either the Federal or State constitutions, or how each was violated by the trial court's order. He did not raise any question of the validity of any provision of any statute as to it being repugnant to the constitution of the State of Illinois, or to any Federal statute, or to the Federal Constitution.

Petitioner's claim (page 27 of his brief) that he raised and asserted the constitutional question before the State trial court in his pleading is unfounded, for such vague expressions referred to in his brief have been adjudicated to be wholly insufficient[1].

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[1] The raising of the constitutional or federal question must not be a formal one. It must be a substantial question and not frivolous. *Equitable Life Assurance Society v. Brown*, 187 U.S. 308, 311; *Pennsylvania R.R. Co. v. Illinois Brick Co.*, 297 U.S. 447, 462.

A mere assertion that a constitutional question is involv-

In the second place, the petitioner seeks a writ of certiorari to the Supreme Court of Illinois when it is not the

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(2) *Continued*

ed, or a constitutional right was invaded, is not in itself sufficient to confer jurisdiction. *People* v. *Estep*, 97 N.E. (2) 823, 825; 409 Ill. 125, certiorari denied, 73 S. Ct. 1112; 345 U.S. 970.

A general assertion that petitioner's constitutional rights have been violated or that a Statute is unconstitutional is not sufficient to confer jurisdiction on the Supreme Court. *Sena* v. *Franke*, 20 Ill. (2) 70; 169 N.E. (2) 335, 337.

In *Bowe* v. *Scott*, 233 U.S. 658, 664, it is stated; " 'That the ordinance is an attempt to take from your complainants whose property adjoins and abuts upon the said alley their rights in and to said alley without due process of law.' But it is settled that such an averment making no reference to the Constitution of the United States and asserting no express rights thereunder is solely referable to the state constitution, which in this instance has a due process clause, and affords no basis whatever for invoking the jurisdiction of this court. *Miller* v. *Cornwall R.R. Co.*, 168 U.S. 131, 134; *Harding* v. *Illinois*, 196 U.S. 78."

In *New York Central R.R. Co.* v. *New York*, 186 U.S. 269, at 273, it is stated: "But assuming, without intimating an opinion to that effect, that the raising of a Federal question in the brief might be sufficient, it is well settled in this court that it must be made to appear that some provision of the Federal, as distinguished from the state, Constitution was relied upon, and that such provision must be set forth."

It must appear affirmatively from the record that a Federal question was presented to the highest court for decision; that its decision of the Federal question was necessary to the determination of the case and that the Federal question was actually decided or that the judgment rendered could not have been rendered without deciding it. *Southwestern Bell Tel. Co.* v. *Oklahoma*, 303 U.S. 206, 212. The Federal question cannot be deduced by inference. *Orley Store Co.* v. *Butler Co.*, 166 U.S. 648, 655; *Thomas* v. *State of Iowa*, 209 U.S. 258; *Sena* v. *Franke*, 169 N.E. (2) 335; 20 Ill. (2) 70.

proper court to which the writ should be directed, for it is not the highest court which rendered a decision and entered the judgment from which a review is sought. In order to review any judgment or decision there must be one. In this case the Supreme Court of Illinois did not render any decision or judgment. It merely entered an order sustaining the motion of the respondents to dismiss the appeal.

In the first appeal the Supreme Court of Illinois refused to take jurisdiction of the case and transferred it to the Appellate Court. In the second appeal it dismissed his appeal because it was not well taken. It did not decide the merits of the case. It expressed no opinion on the matter. If there were a constitutional or Federal question raised, the Supreme Court of Illinois would have had to take jurisdiction, would have had to render an opinion and judgment that there was a constitutional question involved in the matter. It did not do so. It declined to take jurisdiction. So, it left the matter as it was decided by the Appellate Court[2].

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[2] *Michigan-Wisconsin Line* v. *Calvert*, 347 U.S. 157, 161; *American Ry. Express Co.* v. *Levee*, 263 U.S. 19, 20-21; *Chesapeake & Ohio Ry. Co.* v. *Mihas*, 280 U.S. 103; 279 U.S. 827; *Newman* v. *Gates*, 204 U.S. 89; *Ancolin* v. *Atlas Exchange National Bank*, 295 U.S. 209, 210; *Senko* v. *LaCrosse Dredging Corp.*, 352 U.S. 370, 371.

The petitioner must first exhaust his remedy by petition for leave to appeal. (*Matheus* v. *Huxo*, 269 U.S. 262; *Stratton* v. *Stratton*, 239 U.S. 55).

The petition should be dismissed because the court has not the full record before it. (*Hedgebeth* v. *North Carolina*, 334 U.S. 806).

The trial court may sometimes be the highest court to which the writ may be directed. (*Chicago & Eastern Ill. R.R. Co.* v. *Industrial Comm. of Illinois*, 284 U.S. 296; *United States* v. *Richmond*, 177 Fed. Supp. 504, 507).

In the third place, the entire record, properly certified by the proper court, has not been abstracted. The record before the Appellate Court on which it rendered its decision and judgment, is the one that must be brought before your Honors. That is the record on which both the Trial Court and the Appellate Court based their respective orders and decisions.

The opinion of the Appellate Court reveals and reflects that it considered the record in the prior suit. The record in the prior suits supplies a full background that gave to the Trial Court and to the Appellate Court the full meaning of the dispute between the parties. The purpose and the intent of the petitioner in filing his counterclaim in the prior suit, and in filing this suit while the prior suit was pending, will be revealed.

The Appellate Court states in its opinion (Brief 49):

* * * * * *

> "Moreover, we note that plaintiff petitioned the Circuit Court (the prior suit) to strike the answers in controversy on the grounds that they were in bad faith, impertinent, inapplicable and libelous per se. The trial judge in that court denied the motion."

The bad faith of Christoforacos in answering the questions, and the questions and answers themselves, must be considered in view of the whole record. Their pertinency and applicability cannot possibly be determined without the whole record being before this Honorable Court, as it was before the Trial and Appellate Courts.

The above quotation of the order of the Trial Court in the prior suit is res judicata against the petitioner as to the relevancy, applicability, materiality and pertinency, for he did not appeal from the decision of the Trial Court. The petitioner is foreclosed by the rule of estoppel by

verdict from ever raising that question again. *Hanna* v. *Read, et al.*, 102 Ill. 596, 602; *Bfauer Machine etc. Co.* v. *Darling Trucking Co.*, 383 Ill. 569, 574.

In the fourth place the Supreme Court of Illinois decided that there was no constitutional question involved in first appeal of the case and transferred it to the Appellate Court. The Supreme Court did not have jurisdiction of the case because the constitutional question was not raised at the trial, and its decision was not based upon any consideration of any question concerning any Federal statute or the Federal Constitution. No such question was properly preserved. The record wholly failed to show the procedural requirement that would give jurisdiction of the case to the Supreme Court of Illinois. There is no fairly disputed constitutional question presented in the case and such must be affirmatively shown by the record. The court itself is bound to refuse to take jurisdiction of the case when it sees that there is no constitutional question involved or drawn in question. The transfer of the case to the Appellate Court removes from consideration any constitutional question or any Federal question(3).

(3) *Board of Education, et al. v. Pacific National Fire Insurance Co.*, 153 N.E. (2) 498, 19 Ill. App. 2d 290; *Group Securities, Inc.* v. *Carpentier*, 147 N.E. (2) 360; *Schuman* v. *Department of Registration and Education*, 133 N.E. (2) 551, 553, 9 Ill. App. 2d 504, Certiorari Denied 352 U.S. 1001; *Village of Lansing* v. *Hacker*, 130 N.E. (2) 265, 7 Ill. (2) 258; *Community Unit School District No. 6* v. *County Board*, 128 N.E. (2) 898, 6 Ill. (2) 320; *In re Webster's Estate*, 171 N.E. (2) 24, 21 Ill. (2) 54; *Sitelis* v. *Mouhelis*, 141 N.E. (2) 92, 13 Ill. A. (2) 131; *City of Chicago* v. *Campbell*, 170 N.E. (2) 19, 20, 27 Ill. A. (2) 456; *People* v. *Taylor*, 172 N.E. (2) 519, 29 Ill. A. (2) 143; *Wladek* v. *Sedlacek*, 174 N.E. (2) 705, 30 Ill. A. (2) 351.

This Honorable Court has approved that practice of the State of Illinois(*).

In the case of *Lynch* v. *New York*, 293 U.S. 52, at page 54, this Honorable Court says:

> "It is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must

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(*) It must be clear that a Federal question appears in the record. If the decision is based on two different grounds, one of which is based upon the State law and it is fully sufficient to sustain the decision, this Honorable Court will not take jurisdiction. The same rule applies as in this case where the State court did not render an opinion. *Lynch* v. *New York*, 293 U.S. 52, 54-55; *Herb* v. *Pitcain*, 324 U.S. 117, 125-126; *Berea College* v. *Kentucky*, 211 U.S. 45; *Fox Film Corp.* v. *Mueller*, 296 U.S. 207, 210.

The ruling of the State court on questions of pleadings will not be reviewed by the Supreme Court of the United States. *Brinkmeier* v. *Missouri Pacific R.R. Co.*, 224 U.S. 268.

When the judgment of the court of the State of Illinois is rested on ground sufficient to sustain its decision, the Supreme Court of the United States will not take jurisdiction. (*Radio Station WOW, Inc.* v. *Johnson*, 326 U.S. 120).

It appearing that the Honorable Supreme Court of Illinois did not deliver an opinion and since it appears that the judgment of the court might have rested upon non-Federal ground, this Honorable Court does not take jurisdiction to review the judgment of the Trial Court. (*Stembridge* v. *Georgia*, 343 U.S. 541; *Chicago* v. *Willett Co.*, 341 U.S. 913; *Lottes* v. *Illinois*, 334 U.S. 804).

The petitioner did not comply with the jurisdictional and procedural requirements of the State of Illinois and thus he waived the right to raise either State or Federal Constitutional questions. (*Central Union Co.* v. *Edwardsville*, 269 U.S. 190, 194-195; *Pennsylvania Railroad Co.* v. *Illinois Brick Co.*, 297 U.S. 447, 462-5; *Packer* v. *Illinois*, 222 U.S. 571, 574-5; *Edelman* v. *California*, 344 U.S. 357; *Hulbert* v. *City of Chicago*, 202 U.S. 275-277).

appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it. *De Saussure v. Gaillard*, 127 U.S. 216, 234; *Johnson v. Risk*, 137 U.S. 300, 306, 307; *Wood Mowing & Reaping Machine Co. v. Skinner*, 139 U.S. 293, 295, 297; *Eustis v. Bolles*, 150 U.S. 361, 366, 367; *Whitney v. California*, 274 U.S. 357, 360, 361; *Mellon v. O'Neil*, 275 U.S. 212, 214. Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction. *Allen v. Arguimbau*, 198 U.S. 149, 154, 155; *Johnson v. Risk*, supra; *Wood Mowing & Reaping Machine Co. v. Skinner*, supra; *Consolidated Turnpike Co. v. Norfolk & Ocean View Ry. Co.*, 228 U.S. 596, 599; *Cuyahoga River Power Co. v. Northern Realty Co.*, 244 U.S. 300, 302, 304; *Durlen v. Mayo*, 351 U.S. 277, 281."

In the fifth place the petitioner did not properly and fully exhaust the procedural remedy for review given him by the Civil Practice Act of Illinois. He filed a direct appeal from the judgment of the Appellate Court to the Supreme Court of Illinois when he should have filed a petition with the Supreme Court of Illinois for leave to appeal.

Sec. 75 of the Civil Practice Act (Chap. 110) provides that.

> "Appeals shall be taken directly to the Supreme Court (a) in all cases in which a franchise or freehold or the validity of a statute or a construction of the Constitution is involved."

If the case does not fall within that provision and the losing party does not file a petition for leave to appeal, the decision of the Appellate Court is final. The petitioner could not appeal directly to the Supreme Court of Illinois unless a constitutional question arose in the proceedings and in the judgment of the Appellate Court. The Appellate Court, after the cause was transferred to it by the Supreme Court, could not and did not consider any constitutional question. Its opinion is wholly silent on that subject and, therefore, there was no constitutional question created in the proceedings of the Appellate Court that would have justified the Supreme Court of Illinois to take jurisdiction of the case. It dismissed the appeal of the petitioner, stating that his appeal was not well taken. This rule existed prior to the adoption of Sec. 75 of the Civil Practice Act and Rule 32 of the Supreme Court of Illinois[5].

In the sixth place, the petitioner did not include in his abstract the full text of the judgment entered by the Appellate Court of Illinois, First District. It appears on page 3a of this brief.

In the case of *Biagi* v. *O'Connor*, 163 N.E. (2) 461, at page 463; 18 Ill. (2) 238, the court says:

> "This court's jurisdiction, however, is based only on constitutional questions necessarily presented by the Appellate Court's judgment, not by questions suggested by the reasoning which led that court to its decision. *Kamienski* v. *Bluebird Air Service, Inc.*, 389 Ill. 462, 59 N.E. 2d 853; see *Wilson* v. *Chicago &*

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[5] *Cummings-Landau Laundry Machinery Co.* v. *Koplin, et al.*, 54 N.E. (2) 462, at page 464; 386 Ill. 368; *Abrams, et al.* v. *Awotin*, 57 N.E. (2) 464, at 466-467; 368 Ill. 42; *Compass Sales Corporation* v. *National Mineral Co.*, 57 N.E. (2) 888, at pages 889-890; 388 Ill. 281; *Bradford Supply Co., Inc.* v. *Waite*, 64 N.E. (2) 491; 392 Ill. 318.

*Western Indiana Railroad Co.*, 363 Ill. 81, 1 N.E. 2d 224."

In the case of *Kane v. Kremer et al*, 169 N.E. (2) 357, at page 359; 20 Ill. 2d 148, the Supreme Court of Illinois again says:

> "It is well settled that jurisdiction of this court is based only on constitutional issues necessarily presented by the Appellate Court's judgment. It is not enough that constitutional questions may be suggested by the reasoning which influenced the court in reaching its decision. *Biagi v. O'Connor*, 18 Ill. 2d 238, 163 N.E. 2d 461; *Kamienski v. Bluebird Air Service, Inc.*, 389 Ill. 462, 59 N.E. 2d 853, 854."

The Civil Practice Act of Illinois now requires that any review of a judgment of the Appellate Court must be had by petition for leave to appeal. The requirement that a constitutional question must arise in the Appellate Court to give the right for direct appeal to the Supreme Court — still prevails. The petitioner did not comply with rule 32 of the Supreme Court of Illinois; nor did he comply with Section 75 of Chapter 110 of the Ill. Rev. Statutes. He has therefore waived his right to ask for a writ of certiorari.

## CONCLUSION

Wherefore, for the reasons aforesaid, the petition of the petitioner for a writ of certiorari should be denied.

Respectfully submitted,

JOHN C. GEKAS, *Pro Se*.

JAMES P. ECONOMOS,
*Of Counsel.*

# APPENDIX.

## EXHIBIT A

"101:32 (Supreme Court Rule 32). Appeals from the Appellate Court to the Supreme Court.

(1) The party applying for leave to appeal from an Appellate Court shall file a petition in this court, stating therein the reasons for and grounds of appeal. The clerk of this court shall thereupon transmit a certificate of the filing of the petition to the clerk of the Appellate Court who shall transmit to the clerk of this court the record which was transmitted to the Appellate Court with a certified copy of the record of the Appellate Court appended thereto. In case the leave is not granted the record shall be returned forthwith to the clerk of the Appellate Court.

The petitioner shall file with his petition an abstract of the record as prescribed by rule. The petition shall be printed in the manner prescribed for briefs.

The petition shall contain a statement of the points relied upon for a reversal of the judgment, together with authorities and suggestions, concisely stated, in support of the points, a prayer for leave to appeal, and a statement of the date upon which the judgment of the Appellate Court became final. The petition shall contain, or have attached thereto, a printed copy of the opinion of the Appellate Court. If the facts are correctly stated in the opinion they shall not be restated in the petition. If the facts are not so stated, the petitioner may, preliminary to his

statement of points, note the inaccuracy or insufficiency and correct or supply the same.

A petition violating this rule will be stricken.—

Fifteen copies of the petition and abstract, with proof of service, shall be filed within the time provided by statute. The respondent may file 15 printed copies of an answer to the petition, with proof of service, within the time provided by statute. The answer shall state briefly the points and authorities relied upon to meet or obviate the points of the petitioner, and to sustain the judgment. No reply to the answer shall be filed.

* * * * * *

(3) In all criminal cases and in civil cases when notice of appeal as of right is filed in the Appellate Court the clerk shall, not later than 15 days thereafter, transmit to the clerk of this court the same record as provided in this rule in cases of leave to appeal, together with certified copies of the notice of appeal and the proof of service. If the record has theretofore been transmitted to this court on petition for leave to appeal or on appeal by certificate of importance the clerk of the Appellate Court shall transmit only the certified copies of the notice of appeal and proof of service, which, together with the record theretofore filed in this Court, shall stand as the record on both appeals, without order of court."

*(Appendix)*

## EXHIBIT B

At A Term Of The Appellate Court, begun and held at Chicago, on Tuesday, the Third day of October, in the year of our Lord, One Thousand Nine Hundred and Sixty-One, within and for the First District of the State of Illinois:

**Present,**

The Honorable Arthur J. Murphy, Presiding Justice;
" " Henry L. Burman, Justice;
" " Robert E. English, Justice.

Leslie V. Beck, Clerk — Frank G. Sain, Sheriff

Peter S. Sarelas,
Appellant

No. 48391 vs.

Phillip S. Makin alias Phillip S. Marinacos; and Basil Christoforacos alias Hristos Cokinis; and John C. Gekas;
Appellees.

Monday, October 16th A.D. 1962

Error to .....

Appeal from Cook Superior

Superior Court No. 60 S 5744

On this day came again the said parties, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for Error, and being now sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the Record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective and that in the Record there is no Error. Therefore, it is

considered by the Court that the judgment aforesaid, be Affirmed in all things, and stand in Full Force And Effect, notwithstanding the said matters and things therein assigned for Error. And it is further considered by the Court that the said Appellees recover of and from the said Appellant, their costs, by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Leslie V. Beck, Clerk of the Appellate Court of the First District of the State of Illinois, and keeper of the records, files and seals thereof, Do Hereby Certify, that the foregoing is a true copy of the final order of the said Appellate Court in the above entitled cause of record in my office.

In Testimony Whereof, I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this Twenty-First day of March in the year of our Lord One Thousand Nine Hundred and Sixty-Two.

Leslie V. Beck (signed)
Clerk of the Appellate Court
of the First Dist., Illinois.